

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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Reasons for Decision

Syndicat des communications de Radio-Canada
(FNC - CSN),

applicant,

and

Canadian Broadcasting Corporation,

employer,

and

Association of professionals and supervisors of the
Canadian Broadcasting Corporation (APS),

interested party.

Board File: 27480-C

Neutral Citation: 2011 CIRB 595

June 21, 2011

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members, considered the above-noted application. A hearing was held in Montréal, Quebec, on October 18 and 19, 2010.

Appearances

Ms. Julie Sanogo, for the Syndicat des communications de Radio-Canada (FNC - CSN);

Mses. Linda Facchin and Marie Pedneault, for the Canadian Broadcasting Corporation; and

Mses. Chantal Poirier and Lisane Bertrand, for the Association of professionals and supervisors of the Canadian Broadcasting Corporation (APS).

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I–Nature of the Application

[1] The Board has before it a referral dated April 27, 2009, made pursuant to section 65 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) by Arbitrator Jacques Doré, who states that he has exhausted his jurisdiction to deal, in particular, with grievance no. 1181, at issue herein. The Board must rule on the intended scope of the bargaining certificates held by the Syndicat des communications de Radio-Canada (FNC - CSN) (the SCRC) and the Association of professionals and supervisors of the Canadian Broadcasting Corporation (APS) (the APS), in order to determine under which unit the position of copy editor falls.

[2] Grievance no. 1181 was filed by the SCRC on June 6, 2005. It reads as follows:

The Corporation unilaterally decided to exclude Mses. Claire Bissonnette and Josée Bilodeau from the SCRC's jurisdiction, thereby breaching clauses 5.1, 5.2 and 7 of the collective agreement.

(translation)

[3] The Board was moreover advised that Ms. Claire Bissonnette had retired after the grievance had been filed. Ms. Josée Bilodeau was still working as a copy editor at the time of the hearing.

II–Facts

[4] Following a job description (job profile) review and a position title change, Mses. Bissonnette and Bilodeau were transferred from the SCRC bargaining unit to the APS unit.

[5] The SCRC submits that the position of copy editor still falls under its jurisdiction. The bargaining unit covered by the certificate issued by the Board on July 28, 1995 (file no. 530-2419) reads as follows:

all on-air personnel and all persons employed mainly in program design, preparation, co-ordination and finalization, excluding producers, supervisory personnel and similar personnel.

[6] The employer, the Canadian Broadcasting Corporation (the CBC), recognizes that the positions held by Mses. Bissonnette and Bilodeau were included in the SCRC unit prior to the job description review performed between 2004 and 2006. It submits that the job title was changed to reflect the true nature of the work done by the two staff members, which in its opinion was copy editing. The CBC argues that copy editing work falls under the APS unit, in the same way as the other editor positions in existence.

[7] APS, in its capacity as an interested party, submits that the copy editor positions fall within the intended scope of its bargaining unit, covered by the certificate issued by the Board on May 3, 1996 (file no. 555-3583), which reads as follows:

all supervisory staff of the Canadian Broadcasting Corporation or professional employees within the meaning of the *Code*, and all employees who perform similar or comparable functions, excluding employees covered by other certification orders and employees who are employed in a confidential capacity in matters relating to industrial relations.

[8] After reviewing the parties' written submissions, the Board decided to hold a hearing in Montréal, Quebec, on October 18 and 19, 2010.

III—Evidence

[9] The following sums up the substance of the evidence heard concerning the issue in this matter. The SCRC called four witnesses; the APS, two witnesses; and the CBC, one witness.

A—SCRC

[10] The first witness called by the SCRC was Mr. Robert Fontaine, Vice-President of the SCRC. He held the position of President at the time the grievance was filed in 2005. He indicated that he had learned of the change of bargaining unit for Mses. Josée Bilodeau and Claire Bissonnette

through an email dated June 9, 2005, sent by the Human Resources Advisor to Mr. Pierre Cyr, then Vice-President of the SCRC. The email read as follows:

Hi Pierre,

As discussed...

... as part of the SCRC job profile drafting process, I met with Ms. Claire Bissonnette to gather information on her work as a **commentator-interviewer**. It is then that I learned that she was performing one specific task, that is, editing written copy posted to the CBC French network website, and had been performing this task full time since last summer. I later learned that Josée Bilodeau, hired as a **new media researcher**, was doing the same work.

Analyses were conducted to check union jurisdiction over these positions. Following a review of jurisdictions and comparable jobs, it was determined that the two positions came under APS...

(translation; emphasis added)

[11] Mr. Fontaine stated that he had challenged this determination and filed a grievance. He indicated that, at the time the grievance had been filed, he had not known that other copy editor positions existed. There were five such positions at the time he appeared before the Board. He stated that he was relying on the wording of clauses 5.1 and 5.2 of the collective agreement to show that the duties performed by Mes. Bilodeau and Bissonnette came under the jurisdiction of his union, as their duties consisted in editing copy prepared by journalists for public consumption. He added that everything posted to the CBC French network's website came under the jurisdiction of the SCRC. He explained that, unlike a language advisor, who merely makes suggestions on texts, a copy editor can change wording before copy is posted. Thus, in his view, the work done by copy editors falls under his union's jurisdiction.

[12] Mr. Fontaine also indicated that the lineup editors (news editors) are the ones responsible for editing items to be published, and lineup editor positions have always come under the jurisdiction of the SCRC. He testified that the lineup editors check and correct journalists' written items prior to distribution or publication. He added that a lineup editor spends a third of the workday checking and correcting written items for journalists.

[13] On cross-examination, Mr. Fontaine admitted that the advent of the Internet at CBC had brought changes in written journalism and that the debate over jurisdiction had been ongoing ever since. He

also admitted that he did not know how many written items a lineup editor had to edit for television, as his knowledge was in the area of radio.

[14] Mr. Fontaine also stated that all French-language public news reports come under the SCRC, but that the SCRC's jurisdiction does not extend to the CBC French network's institutional website or intranet.

[15] The SCRC's second witness was Ms. Joane Bérubé, who has worked for the CBC French network since 2000 and has held the position of Web Reporter, Digital Services (translation), since 2004. Ms. Bérubé works in Matane and covers the three eastern Quebec regions. She is responsible for updating the CBC French network's websites for the three regions she covers. She has also been the SCRC's Secretary-General since February 2009. Prior to that time, she performed shop steward functions.

[16] She described her job as follows: she writes, selects video and audio links and photos, and determines content to be posted on the Internet on the basis of the information broadcast over radio and television. She stated that, on average, 10 to 12 items are posted on the Internet per day. Her job requires her to be in constant contact with colleagues in other regions and to work under pressure. She works closely with the lineup editors and copy editors.

[17] According to the witness, the copy editor rereads her work and makes any necessary corrections. The copy editor can contact her to clarify her intent, if the text is unclear or the copy editor considers that some information is missing. She indicated that the copy editor can even change the title of an item. Material is sometimes posted without being seen by the copy editor, but the copy editor can make corrections after it is posted.

[18] According to Ms. Bérubé, prior to 2004-05, Mr. Richard Vautour was the editor for material intended for the regions, and that was even before there were lineup editors. Mr. Vautour was the one responsible for ensuring the quality of the French.

[19] Ms. Bérubé also indicated that she had previously worked as a regional lineup editor for radio. She had worked closely with the copy editor, given that there were eight or nine journalists in the region and, as lineup editor, she had not been able to do everything. She testified that the copy editor worked closely with the journalists. She added that 70 percent of her time had been spent rereading journalists' written items. According to the witness, it is the lineup editor that has the last say from an editorial viewpoint, not the journalist.

[20] On cross-examination, Ms. Bérubé indicated that she had worked as Lineup Editor, Digital Services, in 2008 only, on the basis of one week out of every two. She indicated that a regional lineup editor decides what will be posted on the Internet, ensures that the content is regional in nature and checks the editorial angles of news items.

[21] She indicated that a copy editor makes corrections to the written material without necessarily consulting the journalist, unless the corrections will change the meaning. She added that, in the event of disagreement on a point of language between the copy editor and the journalist, the copy editor has the authority to make a decision.

[22] The third witness heard was Ms. Danielle Jazzar, who has worked as the copy editor for the French CBC's *Nouvelles* site for six years and two months. She has a Bachelor's degree in translation and a certificate in journalism. She works with the journalists, in the newsroom. She is responsible for the news website. She described a typical day as follows: she checks all written material for spelling, grammar, semantic and punctuation errors and errors in identifying people in the news items. She also answers journalists' questions and gives them language advice. Ms. Jazzar works closely with the copy writer, journalists and news editor.

[23] Ms. Jazzar described her duties on the basis of the job description for the position of copy editor, which she entered into evidence. She indicated that 80 percent of her duties consisted in answering journalists' questions and editing copy written by the journalists, commentator-interviewers and web masters that are posted to the CBC French network website. Twenty percent of her time is devoted to providing ongoing training for journalists, commentator-interviewers and web masters with a view to gradually increasing their autonomy from a linguistic point of view.

Finally, five per cent of her time is spent evaluating the language skills of the journalists, commentator-interviewers and web masters, and five percent, on performing terminological searches.

[24] Ms. Jazzar testified that her position had been created for television and radio, to avoid errors on the air, although material is not systematically edited. She stated that she acts as a safety net for the team, and added that she edits journalists' written items after they have been posted on the Internet.

[25] The fourth witness for the SCRC was Mr. Richard Vautour, who indicated that he has worked as a copy editor since 2002, but has only held the copy editor title since 2005–2006. He works in IDS Services, Digital Informatics (translation), under the supervision of Ms. Aïda Zénova, Editor-in-Chief, Internet and Digital Services (IDS). Mr. Vautour stated that, in 2002, there had been no job description for his position. The first few months had served to develop a work plan, perform quality control of the French and assess the journalists' performance, and establish posting standards.

[26] He testified that currently he devotes between 30 and 40 percent of his time to the website. He has a Bachelor's degree and a Ph.D. in French literature and a Master's degree in translation. He edits the regional news on all the websites other than the Montréal one. He indicated that, in his work, he is "virtually" surrounded by journalists from Winnipeg, Sudbury, Ottawa, Québec and Moncton, and by the lineup editor and the computer graphics designer, who are all assigned to the website.

[27] He described a typical workday as follows: he reads the news, edits it, corrects errors in syntax and, if he is unclear about the meaning or editorial angle of a news item, enters into contact with the journalist. According to the witness, he works on a daily basis with the language advisor who, unlike him, does not have direct access to the items written by the journalists. Mr. Vautour indicated that he handles 30 to 40 different files a day.

[28] On cross-examination, he indicated that, in 2002, the title of his position had been "Quality Control Officer" (translation). According to the witness, many new standards had to be developed

in 2002, as a result of the creation of the new website. He stated that he had been involved in drafting user guides for those posting items to the website, including technicians, journalists and hosts.

B-APS

[29] The APS called two witnesses, Ms. Josée Bilodeau and Mr. Mario Poudrier.

[30] Ms. Bilodeau has been in the employ of the CBC since 2002. She has a Master's degree in literature and is a writer. She was hired as a freelance "researcher" to edit copy for the website. She was assigned to different public affairs programming and special projects. In 2007, Ms. Bilodeau gradually took over the job being done by Ms. Claire Bissonnette, who then retired in 2008.

[31] She described a typical workday as follows: she interacts with journalists, who ask her questions about the use of the French language. She reviews program websites and corrects minor errors or errors of syntax, and contacts the journalists if necessary. She works mostly in copy editing and spends little time training journalists except, of course, through coaching on a day-to-day basis, whereas in 2002, a great deal of time was invested in training. In her view, people today have a sound educational basis.

[32] On cross-examination, she indicated that, in 2002, she had not been a copy editor, but a quality control officer. She stated that there had been a great many standards to develop in 2002 as a result of the creation of the website. She indicated that she had been involved in drafting several of the work guides on publishing and language standards aimed at journalists, technicians and anyone working on the website.

[33] The second witness for APS was Mr. Mario Poudrier, who has been the National President of APS since 2002. He has worked for the CBC since 1983. Mr. Poudrier provided examples of professional positions included in the APS bargaining unit. He explained that the unit is a Canada-wide unit. On cross-examination, he stated that he had only recently been made aware of the content of the grievance relating to the position of copy editor. He indicated that the English network does

not have copy editor positions or titles, but that the web masters with the English network are included in the APS unit.

C-CBC

[34] The CBC called one witness, Ms. Aïda Zénova. She has worked at the CBC for 20 years and has been the Editor-in-Chief, Internet and Digital Services (IDS) for five years. Her educational background is in French and French literature. She supervises a staff of 10, or more when special projects are underway, all of whom are journalists or copy editors. Their work involves updating 16 information programs on the Internet for both radio and television. She added that each program has its own website. The staff in question is also responsible for the quality of the French on the CBC French network. She indicated that she supervises three copy editors: Ms. Danielle Jazzar for the news; Mr. Robert Lacette for sports/blogs; and Mr. Richard Vautour for regional news.

[35] According to the witness, the copy editors' duties are as follows:

- improve the quality of written material by making corrections and providing training for journalists to improve their French;
- perform purely language-related editing, that is, edit for grammar, linguistic considerations, nuances, grammar, syntax, anglicisms, barbarisms and regional expressions;
- play a teaching role in relation to the journalists;
- evaluate the language skills of journalists.

[36] Ms. Zénova indicated that a copy editor is neither a journalist nor a lineup editor. She added that the copy editors fall under her responsibility, but work on news stories with the journalists. If a news item is not urgent, it is edited before being posted on the website. In the case of a major news story, the copy editor checks the item after it has been posted.

[37] Ms. Zénova indicated that lineup editors also evaluate journalists' work, but from a journalistic rather than a language viewpoint. She explained that the lineup editors are also the ones who decide

on the subject matter to be posted to or removed from the websites, as well as the order of news items, adding that they are, in a manner of speaking, the “orchestrators.”

[38] Ms. Zénova explained that there are no copy editors on duty on weekends. Material that is posted is edited on Monday morning.

IV—Arguments

A—SCRC

[39] Counsel for the SCRC provided background information pertaining to the bargaining certificate issued to it by the Board in 1995. She indicated that the Board had, at that time, had to redefine the bargaining units covering the employees of the CBC French network. In a decision dated November 15, 1994 (*Canadian Broadcasting Corporation* (1994), 96 di 1 (CLRB no. 1091)), the Board had determined that four units, including the SCRC unit, were appropriate for collective bargaining. She stressed that the Board had not defined the SCRC unit in terms of the APS unit.

[40] In support of her arguments, she referred to Board decisions relating to referrals under section 65 of the *Code* that involved jurisdictional disputes, as in this matter, and in particular the decision of the Board in *Ontario Hydro* (1997), 105 di 20 (CLRB no. 1210).

[41] Counsel maintains that, under the jurisdiction clauses of the collective agreement binding the SCRC and the CBC, Internet publishing work comes under the SCRC unit. According to counsel, the evidence shows that the tasks or duties of copy editors consist primarily of editing written material. She states that such tasks as correcting semantic errors are essential to publishing news; the copy editors are the sentinels of the French language. She adds that the work done by the journalist, lineup editor and copy editor forms a whole, as all three workers have access to the text. In her view, it is a joint effort, as Ms. Jazzar pointed out in her testimony. She maintains that, prior to the advent of the Internet, members of the SCRC were responsible for analyzing and ensuring the quality of the French, as pointed out by Mr. Vautour. She indicated that the advent of the Internet had not changed how things were done.

[42] Counsel for the SCRC alleges that the training required by the CBC for the position of copy editor, such as a Bachelor's degree in journalism or in copy-writing and copy-editing, is inadequate. She maintains that, other than the degree in translation, the requirements do not lead to a copy-editing position. In her view, the evidence showed that the bulk of a copy editor's time is spent editing and very little time is spent training journalists or others using the website. She stresses that it is possible that, in 2002, the work of the copy editors was perceived as evaluation work, but that the work has evolved since then and the bulk of the work now involves editing copy. She adds that the evidence has also shown that the English network has no copy-editing positions.

[43] Counsel points out that the SCRC bargaining unit covers production work, of which copy-editing is a part. The SCRC indicates that it would never have filed a grievance if the role of copy editor was merely advisory in nature and if the copy editors did not contribute to program content.

[44] Counsel for the SCRC asks that the Board declare that the position of copy editor is covered by the SCRC bargaining unit.

B-APS

[45] Counsel for the APS indicates that neither the CBC nor the SCRC can change a certification order issued by the Board referred to in a collective agreement. She argues that the position of copy editor is new and that the workers performing the duties of that position are sentinels of the French language. In her view, copy editing is a specialty and the scope of the bargaining certificate is sufficiently broad to include the position of copy editor, as the position is neither a professional position nor a supervisory one, but a position with similar or comparable functions to the two and therefore provided for in the certification order.

[46] Counsel indicates that the use of language and the related standards are determined in conjunction with the language advisors, who are also specialists. She adds that the job description for the position of copy editor entered into evidence shows the professional requirements for the position. She maintains that copy editors spend their time editing news items and performing other

duties, while the lineup editor's duties primarily involve planning and writing items. She accordingly asks that the Board very carefully look at the nature of the duties of those in copy-editing positions.

[47] Counsel filed case law from different labour relations bodies in support of her submissions to show that, to determine which bargaining certificate applies in this matter, the Board must consider the primary duties or activities of the workers in the position at issue, regardless of the titles used. She asks that the Board dismiss the application of the SCRC and find that the APS' collective agreement is the agreement that applies.

C-CBC

[48] To begin with, counsel for the CBC points out that the CBC French network website did not exist at the time the bargaining certificates of the SCRC and the APS were issued by the Board. She submits that the position of copy editor was recently created, whereas the position of language advisor already existed. She indicates that the CBC French network has always been concerned about the quality of the French it uses. She maintains that the duties of the copy editors serve the same purpose as those of the language advisors, that is, to ensure the quality of the French from a linguistic point of view, and in no way relate to the journalistic content of the items. She adds that the SCRC unit covers journalists, news editors and lineup editors, whereas the APS unit covers copy editors, who are specialists—language professionals. She points to the duties of the copy editors described in the job description entered into evidence to show that all of their duties relate solely to language matters and that copy editors are not journalists. She adds that, although it accounts for only five percent of the duties of copy editors, the duty of evaluating journalists from a linguistic viewpoint is important and so is sufficient for them to be deemed supervisors.

[49] Counsel for the CBC considers that the position of copy editor is covered by the APS' bargaining certificate and asks that the Board dismiss the application of the SCRC.

D-SCRC's Reply

[50] In reply, counsel for the SCRC submits that the description of the SCRC unit is broad and comprehensive, allowing for the inclusion of the position of copy editor, while that of the APS unit is limited. She adds that the bargaining certificate covers several positions related to program production and, in her view, the position of copy editor comes under program production. She asks the Board to consider the decision it rendered in 1994 when it reviewed the bargaining units (*Canadian Broadcasting Corporation, supra*).

V-Analysis and Decision

[51] The matter before the Board involves a referral made to it pursuant to section 65 of the *Code* by Arbitrator Jacques Doré. What the Board must determine is whether the position of copy editor is covered by the SCRC's or the APS' bargaining unit. Section 65 of the *Code* reads as follows:

65.(1) Where any question arises in connection with a matter that has been referred to an arbitrator or arbitration board, relating to the existence of a collective agreement or the identification of the parties or employees bound by a collective agreement, the arbitrator or arbitration board, the Minister or any alleged party may refer the question to the Board for determination.

[52] To rule on this jurisdictional dispute between the two unions concerned, the Board must consider the intended scope of the certificates issued, taking into account the job categories that existed at the time the certificates were issued, to determine whether or not the position of copy editor at issue here was, since its creation, always covered by the jurisdictional scope of the applicant union, the SCRC. The CBC considers that the position of copy editor has been covered by the APS' bargaining unit since 2005. In the grievance referred to Arbitrator Jacques Doré on June 6, 2005, the SCRC alleged that the CBC had breached clauses 5.1, 5.2 and 7 of the collective agreement by unilaterally excluding the positions occupied by Mses. Bissonnette and Bilodeau from its jurisdiction.

[53] In *Bell Canada* (1982), 50 di 105 (CLRB no. 393), the Canada Labour Relations Board, the current Board's predecessor, pointed to the role and power of the Board in jurisdictional conflicts

over the employer's assignment of a particular function to members of one or another union, stating the following:

Consequently, the solution to any jurisdictional conflict over the employer's assignment of a particular function to members of one of two unions lies in the interpretation of the certificates, which only the Board has the power to do, with a view to determining the functions that each of the unions is authorized to represent. This process makes it clear which of the two unions represents the function at issue, and at the same time, identifies the incumbents of that function, as well as the collective agreement by which they are bound. Thus by exercising its power to interpret the certificates that it has issued, and that it alone is authorized to do under section 119 of the *Code*, the Board can identify the employees bound by a collective agreement.

(pages 118-119)

[54] In a more recent matter, *Atomic Energy of Canada Limited (Chalk River Laboratories)*, 2002 CIRB 196, the Board, relying on earlier decisions, quoted extensively from a major decision respecting a jurisdictional dispute between two unions, that is, the decision in *Ontario Hydro, supra*, affirmed by the Federal Court of Appeal in *Power Workers' Union, CUPE Local 1000 v. Society of Ontario Hydro Professional and Administrative Employees*, judgment rendered from the bench, no. A-841-97, December 17, 1998 (F.C.A.). In that matter, the Board had been asked to resolve a jurisdictional dispute between two unions. The Board set out the steps that it must take in ruling on this type of matter:

... The Board interprets the scope clauses contained in the collective agreements in light of the actual duties which are in dispute and decides which collective agreement applies. If there is overlap between the two, the Board must decide which agreement will prevail.

...

Once the Board has identified what the employees actually do, it compares these duties to the scope clause of the collective agreement. Where a union is certified and the scope clause corresponds to the unit description in the Board's certificate, the Board assesses the intended scope of the certificate.

(*Ontario Hydro, supra*; pages 37 and 38)

[55] With regard to the type of evidence that it must take into account, the Board stated the following in *Ontario Hydro, supra*:

... The parties may not, however, acquire bargaining rights which are not within their unit by the simple fact that bargaining unit members perform or have performed the work in the past (*Montreal Port Corporation* (1986), 68 di 109 (CLRB no. 606); and *British Columbia Telephone Company*

(1979), 38 di 14; and [1979] 3 Can LRBR 350 (CLRB no. 206). **It is clear, moreover, that amending the job description may mean that the positions and incumbents may move from one bargaining unit to another** (*Bell Canada, supra*; and *Société Radio-Canada*, February 5, 1990 (LD 778)). The essential focus of the Board's inquiry must therefore be to evaluate the current duties or functions of disputed employees and to compare them to the intended scope of the certificate or collective agreement.

(page 39; emphasis added)

[56] In the matter before the Board, it is clear that, when representation rights were conferred on the SCRC and the APS (in 1995 for the SCRC and in 1996 for the APS), as part of the restructuring of the bargaining units, the position of copy editor as described in the job description entered into evidence did not exist. According to the evidence, 2002 was a transitional period, as it was then that the CBC decided to post its information programs on the website. In his testimony, which was not contradicted, Mr. Vautour stated that he had performed the duties of a copy editor, that is, those outlined in the description entered into evidence, since 2002, even though he was not given the title of copy editor until around 2005–2006.

[57] The same was true for Ms. Bilodeau, who was hired by the CBC in 2002 as a “researcher” for the website but, according to her testimony, was responsible for quality control of the French, like Mr. Vautour. Mr. Vautour and Ms. Bilodeau both indicated that, in 2002, they had been involved in the development of learning tools (work guides, writing tools) for the journalists, commentator-interviewers and web masters working on the website, to ensure that their work method complied with the CBC's language quality standards.

[58] The SCRC's bargaining unit description is as follows:

all on-air personnel and all persons employed mainly in program design, preparation, co-ordination and finalization, excluding producers, supervisory personnel and similar personnel.

(emphasis added)

[59] The SCRC cited the following clauses of the collective agreement in support of its argument that the position of copy editor falls within its unit:

JURISDICTION

5.1 The Corporation recognizes the Syndicat des communications de Radio-Canada (FNC-CSN) as the sole bargaining agent for all on-air staff, and for all persons assigned mainly to program design, preparation, coordination and finalization duties, except for producers and supervisory staff, and staff regarded as supervisory, throughout Quebec and in Moncton, and foreign correspondents. Such staff is grouped within the duties described in section 34.

5.2 The Corporation assigns work of an identical or similar nature for Internet distribution to employees in the unit.

[60] It is evident, for the reasons set out above, that the list of positions at clause 35 of the collective agreement does not include the position of copy editor, but does include the position of lineup editor.

[61] The SCRC maintains that everything on the CBC French network's Internet site comes under its jurisdiction. The SCRC states that the lineup editor is a member of its unit and works closely with the copy editor, as indicated by witness Bérubé.

[62] Further, the SCRC is of the view that the work of a copy editor, that is, the editing and correction of the content of written material, is part of the finalizing of the items posted on the Internet and that work is covered by its unit.

[63] The CBC, however, refutes the SCRC's allegation that the duties of a copy editor are part of the coordination and finalizing of programs. The CBC considers that the role of the copy editor is limited to editing and performing language quality control functions, that is, that it is an advisory role in support of the production process in the same way as other comparable positions covered by the APS unit. The CBC adds that copy editors do not contribute to program content as the lineup editors do, nor do they wield any editorial authority over the final product, as they deal only with the linguistic quality of written material.

[64] The Board is of the view that the oral evidence and the job description show that the duties of the copy editor are different from those of the persons employed primarily in the design, preparation, co-ordination and finalization of CBC French network programs, which are covered by the SCRC's bargaining certificate. The duties of the copy editors are summarized as follows in the job description dated March 10, 2005:

Edits items, written and posted, on the CBC's French network website and ensures the ongoing development of journalists, commentator-interviewers and web masters **with a view to meeting the CBC French network's language quality standards.**

(translation; emphasis added)

[65] The evidence in fact shows that the duties of the copy editor are limited to editing copy for language rather than journalistic purposes. Ms. Zénova, who has worked for the CBC for 20 years and is responsible for the copy editors, clearly distinguished between the tasks of the copy editor and those of the lineup editor in her testimony. According to that witness, a lineup editor decides on the subject matter to be posted to or removed from the website and the order in which news items are posted. She specified that the lineup editor can intervene in journalists' work from a journalistic point of view. She described lineup editors as "orchestrators."

[66] The job description for a lineup editor entered into evidence confirms Ms. Zénova's testimony. It states the following, among other things:

8. Checks and corrects the work of print journalists prior to distribution or posting. Vets reports to be broadcast or posted, or has them vetted, with the journalists. Asks for any necessary corrections to be made.

9. Determines story angles, and writes copy, headlines and intros for reports in media-specific style. Prepares live hits with journalists on the ground.

10. Determines the line-up (layout) for news reports. In new media, ensures that every news item has appropriate textual elements (streamers, headlines, etc.), as well as audiovisual and sound elements. For television, supervises the content of the news report during production. For radio, supervises production. In the control room, gives instructions and shares information with the team. While on air, decides on changes to the line-up when required by breaking news.

(translation)

[67] In the Board's view, there is no doubt that the purpose of the lineup editor's functions is different from that of the copy editor's functions. The lineup editor's functions are of a journalistic nature, while those of the copy editor are language related. More specifically, a copy editor finds and corrects semantic, syntactical, grammar, stylistic and spelling errors. Further, if during the copy editing process the copy editor notes what appears to be a factual or substantive error, the copy editor immediately advises the lineup editor, who is responsible for the editorial content and for finalizing of the content. As indicated by Ms. Bérubé, the lineup editor has the last word from an editorial

viewpoint. Further, the evidence shows that part of the copy editor's job is to see to the ongoing development of the journalists, commentator-interviewers and web masters, with a view to increasing their autonomy from a linguistic standpoint. In fact, the copy editors were the ones who, in 2002, were involved in drafting various work guides and language tools that are still used today by those working on the CBC's French network website. Copy editors today invest less time in developing journalists' skills than in editing copy, given journalists' strong educational backgrounds. However, as indicated by Ms. Bérubé, training of journalists has become more of a day-to-day process now. The copy editor is also expected to participate in the evaluation of journalists' language skills.

[68] The competencies required of a copy editor are also different from those required of a lineup editor. According to the job descriptions entered into evidence, a lineup editor is required to have a Bachelor's degree or equivalent. A copy editor, however, must have a Bachelor's degree in journalism, writing, translation, French language teaching, or literature (or the equivalent) as well as an outstanding command of French semantics, stylistics, grammar, syntax and vocabulary. And both Mr. Vautour and Ms. Bilodeau have exceptional academic backgrounds in the area of language. Mr. Vautour has a Bachelor's degree and Ph.D. in French literature and a Master's degree in translation. Ms. Bilodeau has a Master's degree in literature and is a writer. It is clear to the Board that the position of copy editor requires a higher degree of competency and knowledge in the area of language than the lineup editor.

[69] Having carefully considered the duties of the copy editor, the Board finds that, contrary to the duties of the lineup editor, those duties are limited to editing and monitoring on a language level and do not involve program coordination and finalization. In the Board's view, the duties of the copy editor are closer to those of language advisors, whose membership in the APS has not been challenged.

[70] The APS bargaining unit description is as follows:

all supervisory staff of the Canadian Broadcasting Corporation or professional employees within the meaning of the *Code*, and all employees who perform similar or comparable functions, excluding

employees covered by other certification orders and employees who are employed in a confidential capacity in matters relating to industrial relations.

(emphasis added)

[71] The duties of the language advisor are summarized as follows in the job description:

Provides managers and staff assigned to the production of French-language radio and television information programming content or new media documents for the Internet with advice on French language quality. Develops strategies and methods for improving the French on air and online. Participates in language evaluation and language training and development of the staff concerned to ensure compliance with the language policy.

Supervises, organizes and monitors the design and maintenance of the CBC French network's language site.

All of these duties have a direct impact on the corporate image and language quality of the Information sector of the CBC's French network.

(translation)

[72] The evidence in fact shows that the copy editor works with the language advisor on a day-to-day basis in performing the duties of the position, as indicated by Mr. Vautour. Indeed, since the language advisor does not have access to journalists' copy, the copy editor works with the language advisor to ensure uniformity of terminology on a regular basis. Although the two positions have separate duties, their purpose is the same: to comply with the language standards specific to the CBC French network.

[73] The Board finds that the intended scope of the bargaining certificate held by APS is broad enough to include the position of copy editor, given the specialized language knowledge and skills required for the position of copy editor, and given the copy editor's duties related to the ongoing development of journalists, including their participation in language evaluation. The copy editor is an employee who, in the course of employment, engages in functions similar or comparable to those of a professional employee in that the copy editor applies specialized knowledge ordinarily acquired by a course of instruction resulting in graduation from a university.

[74] For all of the above reasons, the Board finds that the position of copy editor is covered by the intended scope of the APS' bargaining certificate.

[75] Accordingly, the position of copy editor will continue to be represented by the APS.

[76] This is a unanimous decision of the Board.

*Certified Translation
Communications*

Louise Fecteau
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Daniel Charbonneau
Member

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